IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 294 of 1999
WITH
CRIMINAL APPEAL NO.295 OF 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SANJIV N KOKJE

Appearance:
MR KP RAVAL, APP, for Petitioner
MR HARSHAD J SHAH for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 04/05/2000

COMMON ORAL JUDGEMENT

1. These are two appeals by the State of Gujarat, for enhancement of the sentence imposed by the learned JMFC, 4th Court, Vadodara, in Criminal Case Nos.3247/98 and 3248/98 respectively, in respect of the same accused respondent no.1.

2. The accused was charged in each of the two criminal cases of having violated the provisions of Rule 68(k)(3) and Rule 68(s) respectively of the Gujarat Factories Rules, 1995.

3. In each of the two cases the accused pleaded guilty and pleaded leniency. The trial court, therefore, imposed a punishment of simple imprisonment till rising of the court with fine of Rs.800/-, in default simple imprisonment for 30 days in the first case, and simple imprisonment till rising of the court with a fine of Rs.1000/-, in default simple imprisonment for 30 days in the second case.

4. It is interesting to note that Rule 68(k)(3) requires that the workmen working in the factory be informed by either a booklet or leaflet that the process on which such workmen are engaged is a hazardous process. It would, therefore, appear that when the accused pleaded guilty, he admitted that the workmen had not been issued the booklet while they were engaged in what was a hazardous process.

5. It is pertinent to note that the complainant does not even allege or suggest that adequate and necessary safety measures had not been taken or that there was no compliance with safety requirements in any other manner. The only violation of this rule implies that by non-publication and distribution of such leaflets, the workmen were not made aware that they were engaged in working upon a hazardous process, and the ancillary details pertaining to the hazardous materials and/or hazardous process.

6. It is in this context that the accused pleaded guilty and was imposed the sentence as discussed hereinabove. On the facts and circumstances of the case I am satisfied that although the accused has admittedly committed offence in question, this offence is not such which would require stringent or strict view to be taken inasmuch as the requirements of the rule are only for the information of the workmen pertaining to the hazardous materials, hazardous process and safety measures applicable thereto. It is neither suggested nor even alleged that the safety measures did not exist or that the conditions in the factory were otherwise hazardous in actual practice due to non-compliance with any other rule.

7. On the facts and circumstances of the case I am satisfied that the sentence imposed by the learned

Magistrate is just and adequate and does not require to be enhanced.

8. So far as the Criminal Appeal No.295/99 arising from Criminal Case No.3248/98 is concerned, the complainant alleges that the accused has violated the provisions of Rule 68(s) of the Rules by not engaging a supervisor being a B.Sc. Graduate having at least five years experience. Even in this case the accused pleaded guilty to the charge and was therefore sentenced to suffer imprisonment till rising of the court with a fine of Rs.1000/-, in default simple imprisonment for 30 days. A plain reading of the said rule indicates that there should be a graduate in Chemistry or Diploma in Chemical Engineering or Technology with five years experience, and only such a qualified person can be appointed to supervise the handling of hazardous substances. The judgement and order of conviction, however, records that as per the complainant no supervisor having the requisite qualification was appointed.

9. The accused having admitted his guilt and prayed for leniency, the learned Magistrate also records that this is the first offence committed by the accused, that he is a man of moderate means, that he repents having committed the offences in question and gives an assurance that the same will not be repeated in future. On these grounds the learned Magistrate chose to impose a sentence of imprisonment till rising of the court with a fine of Rs.1000/-, in default simple imprisonment for 30 days. For the reasons stated by me earlier in respect of the cognate matter, I am of the view that the facts of the case do not justify taking any further and stricter view of the matter and the sentence imposed would be sufficiently deterrent to the accused to ensure that the same would not be repeated.

10. In the premises aforesaid, I am satisfied that no enhancement is called for in either of the two cases referred to herein. These appeals are, therefore, dismissed.

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